

1                   IN THE UNITED STATES DISTRICT COURT  
2                   NORTHERN DISTRICT OF ILLINOIS  
3                   EASTERN DIVISION

4                   UNITED STATES OF AMERICA,                   }

4                   Government,                                   } No. 08 CR 888  
5                   vs.    }

5                   ROD BLAGOJEVICH,                           } Chicago, Illinois  
6                   Defendant.                                   } April 14, 2011  
7   } 11:42 o'clock a.m.  
8

9                   TRANSCRIPT OF PROCEEDINGS  
10                  BEFORE THE HONORABLE JAMES B. ZAGEL

11 For the Government:

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25

1                   (The following proceedings were had in open  
2                   court:)

3                   THE CLERK: 2008 CR 888, United States versus  
4                   Blagojevich.

:42AM

5                   MR. SCHAR: Good morning, Judge.

:45AM

6                   Reid Schar, Chris Niewoehner, Carrie Hamilton  
7                   and Debra Bonamici on behalf of the United States.

8                   MR. SOROSKY: Sheldon Sorosky, S-o-r-o-s-k-y,  
9                   and Aaron Goldstein, G-o-l-d-s-t-e-i-n, and Elliott  
10                  Riebman, and Lauren Kaeseberg on behalf of  
11                  Mr. Blagojevich.

:45AM

12                  MS. SPEARS: Good morning, Your Honor.

13                  Natalie Spears, S-p-e-a-r-s, on behalf of  
14                  Chicago Tribune.

:45AM

15                  THE COURT: I think maybe I'll deal with your  
16                  matter first.

:45AM

17                  I have before me, and I'm sure other counsel  
18                  do, a motion by a media representative to intervene  
19                  expressing a concern about the filing under seal of  
20                  entire motions. I obviously have read the motions.  
21                  My assumption is that they were filed under seal  
22                  because everybody wants to get their motions on file  
23                  in time. I agree with you, that large portions of  
24                  the motions can be unsealed and they can prepare  
25                  redacted versions of it, but in an excess of

1 caution, particularly on the eve of the beginning of  
2 proceedings, I think that's what happened. So what  
3 I'm going to do is I'm going to ask the parties to  
4 prepare the various motions, probably with  
:45AM  
5 relatively minor redactions and get them on file as  
6 soon as possible. I don't think that this is a  
7 matter that's going to be much in dispute, because  
8 some of them should not have been filed entirely  
9 under seal.

10 MS. SPEARS: Thank you, Your Honor. And in  
11 fact the parties prior to coming here while we were  
12 outside the hall had indicated that they were going  
13 to do that as well.

14 THE COURT: Yeah. This is not a difficult  
15 issue, because as soon as I saw your motion, having  
16 read the motions myself, I realized they probably  
17 shouldn't have been filed that way.

18 MS. SPEARS: If I could just make a request,  
19 Your Honor? One is that going forward, it would be  
20 helpful, obviously if Your Honor could direct that  
21 wholesale sealing of pleadings in the first  
22 instances not happen, and to the extent that the  
23 parties need to file something under seal, as the  
24 Seventh circuit has directed, the majority of  
25 argument and whatever can be made public should be

:45AM

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:46AM  
1 made public in the first instance, and also that  
2 just that Your Honor would stay involved in the  
3 process which is important to the media and the  
4 public, obviously, so that the parties don't have  
5 carte blanche to seal whatever they feel to seal and  
6 with Your Honor having the last word, if you will,  
7 to be a check in the process.

:46AM  
8 THE COURT: I actually think that this is  
9 what I told them. I also don't think it's going to  
10 be a problem in the future, and the reason I don't  
11 think it's going to be a problem in the future is I  
12 think this process existed because of the number of  
13 motions that were filed and because of the necessity  
14 to resolve these things relatively soon. I think  
15 under ordinary circumstances would it not happen,  
16 and I believe what I've said now is sufficient  
17 caution to the parties. And if it turns out to be  
18 not sufficient, I can address it in a more concrete  
19 way.

:46AM  
20 MS. SPEARS: Thank you.

21 would there be a date certain? I think  
22 Ms. Bonamici had indicated by the end of the week  
23 next week would be doable.

24 MS. BONAMICI: We've spoken, we think that  
25 would be reasonable.

1           THE COURT: All right. And if this turns out  
2 to be a persistent problem, we'll set up a procedure  
3 to address it, but I don't think it's necessary  
4 since I believe, basically, the, lawyers had the  
5 same reaction to the motion I did, which is is that  
6 the motion had merit, your motion had merit.

7           Okay?

8           MS. SPEARS: Thank you, Your Honor.

9           THE COURT: Sure.

10          Now we can deal with the various motions.

11          MR. SCHAR: Yes, Judge.

12          THE COURT: How about motion for a  
13 continuance, we can deal with that one first.

14          MR. SCHAR: I believe it's fully briefed with  
15 both a response, reply, and a surreply.

16          THE COURT: It has pretty much everything in  
17 it that it could possibly have.

18          Any further comments anybody wants to add?

19          MR. SCHAR: No, Judge.

20          MR. SOROSKY: Well, we would just state, Your  
21 Honor, the motion for a continuance is based on the  
22 fact that usually two to three weeks before trial,  
23 even in a complex trial like this, the defense  
24 attorneys can primarily just concentrate on the  
25 actual trial. Because of a flurry of pretrial

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:49AM  
1 motions, perhaps somewhat unanticipated by anyone  
2 but nevertheless around, defense counsel have  
3 been required to divide their time between actual  
4 trial preparation and spending time responding to  
5 these motions, and that is the only reason why we've  
6 asked for a short brief continuance for that narrow  
7 reason, and that's all.

8 THE COURT: You move to respond to this?

9 MR. SCHAR: No, Judge.

:49AM  
10 THE COURT: Motion for a continuance is  
11 denied, and my reasons are that there is nothing in  
12 what was disclosed, particularly with respect to the  
13 minimization issue, that would significantly alter  
14 the preparation of either side with this case.

:50AM  
15 I also consider the fact that we're not  
16 dealing with an ordinary case, we're dealing with a  
17 retrial on a fairly large number of counts that have  
18 already been tried. So the level of understanding  
19 of the defense of what they're going to be facing is  
20 quite high, extraordinarily high, because they've  
21 seen most of it already.

22 Moreover, because of the government's action  
23 with respect to certain counts, the legal issues are  
24 less complex than they were before. The  
25 instructions will be simpler, the presentation of

:51AM  
1 the government's case will be shorter and more  
2 streamlined than it was before, so there's virtually  
3 nothing new and there's been plenty of time to deal  
4 with whatever might possibly be new. There is, in  
5 this case, more than adequate time to prepare and I  
6 see no reason to grant the motion for a continuance,  
7 the motion is denied.

8           The next issue, the medical records of the  
9 witness Cari. Any final words from anybody?

:51AM  
10          MR. SCHAR: No, Judge.

11          THE COURT: what?

12          MR. SCHAR: No, Your Honor.

:52AM  
13          MS. KAESEBERG: Your Honor, it's fully  
14 briefed before you, so the our arguments made in our  
15 reply is that this is such a unique circumstance,  
16 this isn't just a fishing expedition as the  
17 government contends to gain medical records of a  
18 witness. This is a witness who displayed behavior  
19 after testifying that indicates that his  
20 self-reporting as to his medical condition and  
21 medications may not be accurate. It may be  
22 accurate, we believe that we're entitled to discover  
23 what medical conditions and medications he may be  
24 on, and that's contained in our reply.

:52AM  
25          THE COURT: What I have in this motion is, at

1 least from the defense side, is a series of medical  
2 opinions voiced by lawyers. The single most  
3 striking thing I found is the idea that because of  
4 what happened outside the courthouse when what I  
5 derived from the photographs, the still photographs  
6 that were given to me, is a witness who bumps into  
7 someone or is bumped by someone and falls to the  
8 ground. I suppose there might be some expert  
9 somewhere who studies the nature of implications  
10 that can be drawn from the witness's response in  
11 that particular instance, but I don't see any  
12 support for any expert opinion on that. And what I  
13 saw was this, I saw an individual testifying about  
14 an issue in which no one disputes is well within his  
15 area of legal expertise. The man was involved in  
16 this because he knows the law of fundraising, and  
17 his perceptions on that, his testimony and the  
18 evidence that's offered with respect to that, to his  
19 mental state with respect to that, give no reason to  
20 make further inquiry into his medical history.

21 And I think defense knows this, because  
22 that's why they made a big point of his falling down  
23 to the ground after being bumped or bumping into  
24 some media person and says, well, this shows some  
25 difficulty in perception. I don't get the point,

:55AM  
1 and the reason I don't get the point is you're  
2 dealing with a an individual on the witness stand  
3 talking about a field in which he is an expert and  
4 quite familiar with and then you have a reaction of  
5 something in which I suspect he is not an expert,  
6 and that is being confronted by a large number of  
7 media people and television cameras walking out of  
8 courtroom.

:55AM  
9 I am unwilling to assume and there is no  
10 basis given for me to assume even the possibility  
11 that what happened to him outside the courthouse has  
12 any relevance to his ability to perceive the events  
13 that happened involving his own specialties.

:55AM  
14 Lawyers like Mr. -- in fact, lawyers, in general,  
15 don't spend a lot of time dealing with media scrums.  
16 And the fact that he went to the ground strikes me  
17 as telling me nothing about his mental state or his  
18 ability to perceive. The motion struck me as having  
19 a certain desperation hinge to it, but maybe it  
20 didn't, maybe it was a heartfelt view by persons  
21 untrained and who offered me no supporting  
22 affidavit. So with respect to the disclosure of  
23 medical records, which the government I accept does  
24 not have --

:56AM  
25 MR. SCHAR: Correct, Judge.

1           THE COURT: -- is denied.

2           Next is the motion to reconsider with respect  
3 to probable cause. Any final words with respect to  
4 this one from anybody?

:56AM

5           MR. SCHAR: No, Judge.

6           MR. SOROSKY: No; none.

:57AM

7           THE COURT: Part of the briefing offered by  
8 the defendant in this case is that their waiver of  
9 these claims, which was made before the first trial,  
10 without any attempt until very recently to withdraw  
11 or revoke that waiver, that the reason that I upheld  
12 the waiver is that I thought it was somehow the law  
13 of the case. This is not true. I didn't think it  
14 was the law of the case, I recognize I do have the  
15 power to excuse the waiver. My decision was not  
16 made on the theory that I was bound to decide it as  
17 I did. I believe that the waiver is binding and  
18 should be binding. There is nothing that would  
19 persuade me that the interest of justice require  
20 that the waiver be revoked. There is no sufficient  
21 basis to make me feel that there is strong  
22 justification for reopening an issue that had been  
23 closed on the grounds of the merits expressed for  
24 granting the motion.

:58AM

25           More importantly, I believe that the

:58AM

:58AM  
1 government was entitled to rely on the waiver, that  
2 the government would be prejudiced if the waiver was  
3 revoked, and that even in the event that the waiver  
4 were revoked, the result would be exactly the same.  
5 This is a pointless motion and for this reason I do  
6 not intend to reconsider the merits.

:59AM  
7 The next item I have is improper  
8 minimization. With respect to this motion what I  
9 have is a fully briefed motion and accompanying the  
10 fully briefed motion I have the special report  
11 submitted to the Chief Judge in connection with some  
12 of the very issues that are raised; although,  
13 ironically, not the most important one from the  
14 point of view of the defense, and the hearing held  
15 by Chief Judge Holderman with respect to those  
16 issues. Anybody want to say anything other than  
17 what's already been briefed?

:00PM  
18 MR. SCHAR: No, Judge.

19 MR. SOROSKY: No, Your Honor.

:00PM  
20 THE COURT: With respect to the minimization,  
21 I believe there was adequate segregation between the  
22 Assistant United State's Attorneys who are trying  
23 this case and the Assistant United State's Attorneys  
24 who monitored the level of minimization and the  
25 execution of the minimization. There was a computer

1 problem in the initial stages which may have  
2 resulted in some passages, calls not being  
3 minimized, or to put it in simple terms the  
4 recording machine was not turned off, there is no  
:01PM 5 possible showing or attempt to show prejudice from  
6 that to the defense in this particular case. And in  
7 fact, although I'm not called upon to decide this,  
8 it is probably true that what the government  
9 original thought should have been minimized because  
:01PM 10 it was potentially privileged probably wasn't  
11 privileged at all and the minimization was  
12 absolutely unnecessary.

13 But the real point of the defense motion is  
14 addressed not to failure of minimization but to  
15 excessive minimization, that the government  
16 over-minimized it. The problem with that argument  
17 is is that when Congress allowed Title 3 intercepts,  
18 as far as the government was concerned at the time,  
19 the government would have been perfectly happy to  
20 record every single word and write it down, and it  
21 was not the government that decided particularly to  
22 minimize, it was Congress that imposed minimization.  
23 They thought it would be too intrusive without  
24 minimization. And the government accepted that, and  
25 the main reason they accepted it was because if they  
:02PM  
:03PM

:03PM  
1 didn't accept it there would be no Title 3. It is  
2 inherent in the decision of Congress to require  
3 minimization that some things that might have been  
4 relevant, might be helpful to the prosecution, might  
5 be helpful to the defense would not be recorded and  
6 the decision was made that preservation of privilege  
7 was more important than preservation of pieces of  
8 evidence that somebody might want to have recorded.

:03PM  
9 This is congressional policy, not only is it  
10 congressional policy it's quite clear from reading  
11 the opinions of the Supreme Court that the point of  
12 view of the justices over a period of time that had  
13 there not been minimization, the court would have  
14 required it in one form or another for  
15 constitutional reasons.

:04PM  
16 So what is not on the tapes is not on the  
17 tapes because Congress decided it shouldn't be on  
18 the tapes as a matter of policy, and in my view had  
19 they not done so the Supreme Court would have  
20 decided as a matter of constitutional law these  
21 things should not be recorded.

:04PM  
22 I have not found a case in which a defendant  
23 has said to a court I've been prejudiced because  
24 there's a really good piece of evidence that I think  
25 would be recorded and they minimized it and so

:05PM  
1 therefore I lost my opportunity to use it. I have  
2 not found a case that says undue minimization or  
3 minimization in general, even though it's perfectly  
4 within the statute, gives a right to relief for  
5 somebody who thinks that there's evidence that might  
6 have been helpful that wasn't preserved. This is  
7 congressional policy, I don't think the argument has  
8 been made much that the government should have  
9 recorded something and didn't.

:05PM  
10 And, indeed, in many cases, minimization  
11 would allow the defense to make an assertion that  
12 there would be evidence that would be useful to it  
13 but unfortunately it wasn't recorded, defendants  
14 have made this argument before, and they could make  
15 this argument free from the contradiction by actual  
16 tapes. It allows anybody to say that if only they  
17 recorded it, they would have seen X, Y or Z. So I  
18 don't think the over-minimization argument goes  
19 anywhere in this case. I think it is just plain  
20 wrong.

:06PM  
21 And moreover, virtually every conversation  
22 that is played here, it was played in the first  
23 trial and is going to be played in the second trial,  
24 was participated in by witnesses who are alive and  
25 well and available to testify, including, among

:06PM  
1 other people, the defendant himself and the people  
2 he was conversing with, and if their memory differs  
3 from what is on the recording, they can testify to  
4 that, but more importantly, if they think there was  
5 something that's important that wasn't recorded,  
6 they can say, yes, this is what somebody said or  
7 this is what I said.

:07PM  
8 The minimization argument is too weak to  
9 deserve more time for us to address. It is a  
10 consequence of minimization that some things that  
11 should have been recorded weren't recorded, but the  
12 real difficulty that can sometimes be presented by  
13 these cases isn't presented here, and that is, for  
14 example, when unavailable witness who is no longer  
15 around can't testify as to what inculpatory or  
16 exculpatory information was not on the recording.

:08PM  
17 So my finding is that minimization was  
18 properly conducted, some of the original errors  
19 which occurred only in the very earliest stages of  
20 the Title 3 and were promptly corrected thereafter,  
21 and I agree with Judge Holderman's assessment and  
22 conclusions at his hearing are, in any event,  
23 matters that do not prejudice the defendant in this  
24 case, or, for that matter, any other potential  
25 defendant in any way. So the motion to suppress

1 based on improper minimization is denied.

2 I now have a motion having to deal with  
3 proposed redactions and the government's  
4 consolidated motions in limine, am I missing  
5 anything?

6 :09PM MR. SCHAR: Judge, there's a request for a  
7 FBI report that was filed.

8 :09PM THE COURT: Right. I considered that  
9 previously. I have re-read the report. There is  
10 nothing in it -- and the proposed use of it by the  
11 defense is the impeachment of the witness Balanoff,  
12 there is nothing in that report that could be used  
13 for impeachment. There is in fact nothing in that  
14 report that's impeaching, but leaving aside that  
15 fact alone, there is nothing that can be used for  
16 impeachment. So that motion is denied again, or,  
17 more precisely, I'm reconfirming my ruling, which in  
18 this particular case is obviously on a more detailed  
19 footing than it was the first time because I heard  
20 Balanoff's testimony.

21 :10PM So I'm now down to redactions and motions in  
22 limine, unless somebody tells me I forgot something.  
23 I have a lot of motions here and I would not feel  
24 insulted if somebody says to judge, you forgot x.

25 :10PM MR. SOROSKY: No, no, no.

1           THE COURT: Good. I mean, this is the time  
2 to speak.

3           Consolidated motions in limine --

4           MR. GOLDSTEIN: Your Honor, sorry to  
:10PM 5 interrupt. Just as to the consolidated motion in  
6 limine, we would like an opportunity to respond.

7           THE COURT: I would actually like to see the  
8 response, and the reason I would like to see the  
9 response is, there are certain general propositions  
10 here which I accept and which I think you know I'm  
11 going to accept, in fact I accepted it the first  
12 time, and the reason I'd like to hear the response  
13 is because you may in this particular case have  
14 specific instances in which you think perhaps the  
15 general rule should not apply.  
:11PM

16           The motion to preclude questions and comments  
17 that invite the jury to speculate on unplayed or  
18 unrecorded conversations is largely going to be  
19 granted. I sustained objections to many of these in  
20 the first trial and I will, as a general rule,  
21 sustain them in this trial and may in fact issue  
22 specific orders precluding their use so that I don't  
23 have to sustain the objection.  
:11PM

24           And with respect to that which is unplayed, I  
25 don't actually conceive of some permissible use of  
:12PM

1 that, but maybe there is something.

2 Motion to exclude evidence and argument  
3 concerning unlawfulness and non-corrupt conduct,  
4 this is an issue which I have raised before and used  
5 the tired old example of the fact that if somebody  
6 robs ten banks on ten separate days of the year,  
7 it's no defense to introduce the fact that on  
8 355 days of the year he didn't rob a bank.

9 MR. SOROSKY: Your Honor, if I can interrupt  
10 you --

11 THE COURT: I think maybe you want to wait  
12 until I'm done, because --

13 MR. SOROSKY: Okay, I'll wait until you're  
14 done.

15 THE COURT: Because I think you're going to  
16 have some stuff that you may want to put in writing.

17 The motion to exclude opinion evidence  
18 regarding legality and regarding the usual and  
19 normal practices is granted to the extent that the  
20 defense intends to use lay witnesses, which is  
21 actually the point the government is making. I do  
22 not believe the government is making the point that  
23 you can never introduce evidence of this sort, you  
24 can under certain circumstances, but to do so you  
25 have to have an expert witness, which of course

:12PM

:13PM

:13PM

:13PM

:14PM

1 you're free to do.

2           with respect to evidence and arguments  
3 regarding custom and practice or  
4 you-can't-convict-me-because-everyone-does-it  
5 argument, which is the argument that's being made,  
6 is an argument that you cannot make the way it was  
7 made. The same is true of questions regarding the  
8 absence of objections by others. It became clear as  
9 time went on that the argument evolved into there  
10 were a lot of lawyers in the room with defendant and  
11 nobody said it was illegal and therefore he was  
12 entitled to rely on this silence, which is not the  
13 law, the law is very clear on that point.

14           I do not by so ruling exclude the possibility  
15 that the defendant testifies and says I am a lawyer,  
16 I looked at the law and I thought it was legal, I  
17 had a good faith belief, I'm not excluding this, I'm  
18 talking about the opinions that he might draw from  
19 the fact that somebody didn't say, "wait, stop,"  
20 immediately.

21           A couple of issues that specifically ought to  
22 be addressed is the government's position that  
23 events occurring with respect to the defendant's  
24 conduct after he was arrested, or at any point in  
25 time after he knew that he was the subject of an

:14PM

:14PM

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:16PM

:16PM  
1 investigation and the subject of recordings, is an  
2 issue that I think was not fully addressed the first  
3 time and ought to be addressed now. And the reason  
4 I would be willing to see briefing on this is it is  
5 new, we didn't deal with it the last time and it  
6 presents a live issue.

:16PM  
7 MR. SOROSKY: I also think another new issue  
8 is the concept of not being able to mention what was  
9 mentioned in the first trial concerning the fact  
10 that Children's Memorial Hospital received the  
11 allocation of money.

:17PM  
12 THE COURT: Yeah, it's essentially all part  
13 of a piece. Because the government's position is is  
14 that once he realizes that somebody might know about  
15 all of this stuff, you can't give him any credit for  
16 doing the right thing because he's doing it because  
17 he's trying to get out from under the troubles that  
18 he's in.

:17PM  
19 Now, the reason this has to be addressed is,  
20 a lot of it depends, as a lot of the first trial  
21 depended, on what kind of evidence the defense  
22 offers. One of the distinctive patterns of the  
23 defense in this particular case and caused a lot of  
24 sustaining of objections was the desire of the  
25 defense, not uncommon for defense counsel in these

:18PM  
1 and other cases, is to convey information for the  
2 question and not the answer, and usually the only  
3 way you do that is violate a rule which says you  
4 can't assume a fact that is not in evidence, and  
5 many questions did, and I don't want a recurrence of  
6 that.

:18PM  
7 This is a case in which much of what the  
8 defense wants to introduce can pretty much only be  
9 introduced by a defendant on the witness stand, not  
10 all of it but some of it, and we're going to have to  
11 face that issue.

:18PM  
12 In the first trial, it was simpler to deal  
13 with because there had been an unequivocal  
14 statement, defense counsel in opening statement that  
15 the defendant was going to testify, and several of  
16 my rulings gave leeway to the defense because okay,  
17 ask the question because we've been told that the  
18 defendant is going to get up on the witness stand,  
19 and in the end you would end up with assertions that the  
20 prosecution wasn't able to confront. And while I  
21 don't think the prosecution's right to confront  
22 witnesses has a constitutional basis, it is in fact  
23 a prosecution's right as well, and in many cases  
24 they were in fact, by the way the case was tried,  
25 denied their own right to confront the defense.

:19PM

1           So we have to deal with this in terms of  
2 events which happened after revelation and the other  
3 issues that are raised. what I tried to do is tell  
4 you that in at least in the abstract, almost all of  
5 the positions taken, in fact all the positions taken  
6 in these motions in limine are presumptively correct  
7 in the abstract, but they might not be correct in  
8 terms of specific offers. And your responses,  
9 instead of doing a general briefing, should say this  
10 is what we intend to do, this is what we want, this  
11 is what we want to try to prove, and this is how we  
12 intend to prove it. Because some of the things in  
13 the classic example I gave was, a belief that what  
14 was done was legally right, and it sort of came in  
15 through the back door the first time, and if it  
16 comes in this time it's going to come in through the  
17 front door with the appropriate protections, but I  
18 don't know what you intend to do and you're going to  
19 have to tell me. So that's my only commentary with  
20 respect to that.

21           With respect to the redactions, the defendant  
22 has objected to some proposed redactions. The  
23 government when they filed the proposed redactions  
24 gave a justification for it, but I think the  
25 government may want to respond to specific

:21PM  
1 objections. So we can do deal with that as time  
2 goes on. I don't think we're going to have a lot to  
3 do with these things. There were a couple of  
4 redactions here that the government made that the  
5 defendant objected to and I was in a position of  
6 wondering why, I was wondering why the government  
7 redacted it and I was wondering why the defense  
8 objected to the redaction; in other words, I read  
9 the evidence a different way, I thought some of the  
10 stuff they redacted was actually good for the  
11 prosecution and what the defense wanted to put in  
12 was not so good for the defense, but the judge never  
13 knows as much about the evidence as the lawyers do,  
14 so I could be wrong about that.

:22PM  
15 Basically, I think we're done with this stuff  
16 I have. So now we can deal with what the lawyers  
17 have.

:22PM  
18 MR. SCHAR: Judge, we filed a motion related  
19 to additional redactions that falls into play, I  
20 think what Your Honor has been referring to and we  
21 will respond by Monday, if that's okay --

22 THE COURT: Yeah.

23 MR. SCHAR: -- if not earlier.

24 But I believe there's also additional  
25 objection to redactions that were in the first trial

1 that.

2 THE COURT: Right.

3 MR. SCHAR: I don't know if you wanted to  
4 respond to that.

:23PM

5 THE COURT: No, I don't. I've dealt with  
6 that. I regard that position as essentially we're  
7 not waiving this. And I don't blame them for doing  
8 that because you have raised the issue of redactions  
9 and if they remain silent in the face of this, were  
10 I in their position I would be concerned about  
11 waiving, but I have felt with the issues, I don't  
12 see new arguments, and I'm not going to reconsider  
13 those after having read what I've read.

:23PM

14 MR. SCHAR: Okay. Thank you, Judge.

:23PM

15 THE COURT: Anything else from anybody?

:23PM

16 MR. SOROSKY: Just two comments that the  
17 defense would like to make, one concerning the first  
18 issue before the Court concerning filing of motions  
19 under seal. The defense has always been in the  
20 position that we would like everything opened and  
21 not under seal. We only file motions under seal to  
22 comply with the law and the court orders.

:24PM

23 Secondly, focusing on the motion in limine  
24 and this issue about asking questions of as to where  
25 the defense asks the witness questions is it legal.

1 We certainly agree with Your Honor when Your Honor  
2 says if someone is on trial for a specific offense  
3 and the defense tries to show that he doesn't commit  
4 other offenses therefore the defendant is sort of a  
:24PM  
5 good guy. We certainly agree that there's no basis  
6 for a question like that, but let me just give one  
7 example that everyone will remember and this  
8 occurred many, many times during the trial: The  
9 prosecution brought out at great length how Governor  
10 Blagojevich made have had a peccadillo in that he  
11 spent large sums of money on suits. I would assume,  
12 to the best of my knowledge, I could say this,  
13 that's not a crime to spend a lot of money on suits,  
14 but as a lawyer I can see that perhaps the  
:24PM  
15 prosecution may feel, oh, we'll gain a granule of  
16 sugar with the jury by saying he spends excessive  
17 amounts of money on suits.

18 So after the prosecution perhaps spends  
19 literally ten to fifteen minutes with documents and  
20 so forth as to how much money he spends on suits,  
21 the defense just wants to ask one question, "well,  
22 there's nothing illegal about that, is there," and  
23 then the objections come.  
:25PM

24 So in many of those situations where the  
25 defense asks the question "is it illegal," it's sort

:26PM  
1 of like the government throws a punch at us and we  
2 can't punch back, because there is no better defense  
3 to the whole issue for the suits, for example, by  
4 the defense asking "well, what's illegal about that,  
5 Ms. Schindler," she was the IRS agent who showed all  
6 that money spent on suits, and she would say it's  
7 not illegal. And we're precluded from doing that,  
8 but this is a question which was clearly invited by  
9 the prosecution. And this is just one example  
10 that's fresh in my mind now and perhaps fresh in  
11 everyone's mind once I mention it, but there were  
12 many times when that went on.

:27PM  
13 So I think some rule has to be crafted if the  
14 prosecution is going to continue along those tactics  
15 and the defendant is to receive a fair trial. And I  
16 may not be wise enough to know how to do it, perhaps  
17 an instruction by the Court every time a question  
18 like that is asked that it's not illegal to spend a  
19 lot of money on suits. Or I don't know how else to  
20 do it, or perhaps we've got to go over the  
21 prosecution's case to see what they can or cannot  
22 ask, but I think this is a problem in this trial.  
23

24 THE COURT: Mr. Schar.

25 MR. SCHAR: Judge, of course it's not a  
problem in this trial, because the question is a  
:27PM

:28PM  
1 non-sequitur to the issue. The issue is providing  
2 motive evidence, things like that. If he thinks  
3 that there is something improper about the mode of  
4 evidence or the degree of it, the extent of it,  
5 certainly they have a right to object, and in  
6 response Your Honor will rule just as we object. It  
7 doesn't mean that an agent whose actual job is not  
8 to determine illegality in the context of suits  
9 should be asked the question whether it's illegal.

:28PM  
10 Beyond that, obviously, the issue is in terms of  
11 things like that if the evidence is part of a larger  
12 scheme that explains why in fact there was  
13 illegality, whether he buys the suit in and of  
14 itself being illegal or not legal is not the issue,  
15 because, frankly, the answer may be to the context  
16 he was spending his money recklessly and ended up  
17 needing more money and did the following, maybe it  
18 is illegal, but that's why we don't allow lay  
19 opinions on this issue, and I think Your Honor has  
20 laid that out.

21 I'm happy to talk about the first issue about  
22 them actually wanting everything in the public  
23 domain, but I assume that was more of a statement  
24 for others and not actually Your Honor.

25 THE COURT: Well, I'm not going to address

1 that one either.

2           The problem I have is that I still think,  
3 Mr. Sorosky, that you're dragging into the case an  
4 issue that isn't there, although I understand why  
5 you would do that. Because the government has never  
6 hinted at all that it's illegal to spend a lot of  
7 money on clothes. In fact, I don't think the  
8 government ever took the position that anything he  
9 was spending was illegal. It's illegal to buy dope,  
10 the government didn't say anything about the  
11 defendant doing that. It's illegal to buy a machine  
12 gun. There are lots of things that's illegal to  
13 buy. what the government was simply saying is is he  
14 spent himself into a hole and for this reason he  
15 needed money. And, in fact, the question that the  
16 defense lawyer asks when he says to the witness,  
17 like the IRS agent, there's nothing illegal about  
18 spending a lot of money on clothes, or in this I  
19 think was not particularly at issue so it's  
20 hypothetical, nothing illegal about spending a lot  
21 of money on caviar, nothing illegal about buying  
22 expensive things, buying fancy cars, but what the  
23 defense is doing is they are refocusing the  
24 government's case in an area where the government  
25 didn't focus in the first place, because the

:29PM

:30PM

:30PM

:30PM

:31PM

1 government is never making a claim that it's  
2 illegal. And what the defense does when they say  
3 well it's not illegal, you have planted in the  
4 jury's mind or in a juror's mind the idea that what  
5 the government is contending is that it was illegal  
6 somehow for him to spend a lot of money on clothes,  
7 and that's not what the government is doing.

8 So basically what we have here, and it's  
9 fairly common, is what the government is doing is  
10 showing that he's spending a lot of money on  
11 clothes, spending himself into a hole on things like  
12 clothes, hoping that the subtext to the message to  
13 the jurors is this is really not a very admirable  
14 thing that he's spending a lot of money on clothes,  
15 and that's why the defense gets exercised about that  
16 kind of examination by the prosecution, that this is  
17 the undertone of no, no, it's not illegal but all of  
18 us here, you, members of the jury, members of the  
19 public, don't spend this much money on clothes and  
20 this is a ground to disapprove of the defendant in  
21 this particular case. And to meet that, to meet  
22 that, the defense says something about there's  
23 nothing illegal about it.

24 This is people pushing emotional triggers in,  
25 and I don't think it's a particularly good idea and

1 I am perfectly willing to ask the government to make  
2 these points quite clear. And there was another  
3 point in the course of this trial where the  
4 government was trying to convey a message with  
5 respect to associations of the defendant with other  
6 people, other disreputable people, which I stopped  
7 them from doing. I don't think that the list of  
8 expenditures and the fact that he's basically  
9 pushing himself into debt, in itself, conveys that.

:33PM  
10 If you think they overdid it with respect to  
11 emphasizing the expensive stuff he spent money on,  
12 and the price of the suits, and a variety of other  
13 things, if you want me to require the government to  
14 be less flamboyant with that issue, I'd be perfectly  
15 willing to consider that, but I don't really want  
16 this kind of thing where a claim not made by the  
17 government is inserted into the case because pretty  
18 much the defense feels the way to get themselves off  
19 the hook.

:34PM  
20 So if you believe my little lengthy overlong  
21 speech right now was designed to send a message to  
22 both sides, you are right.

23 Anything else you want to raise?

24 MS. SPEARS: Your Honor, actually defense --

25 THE COURT: Wait. Wait. Let them finish. I

1 won't shut you out.

2 MR. SOROSKY: No, nothing else, nothing else  
3 concerning all of the motions you've ruled on.

4 MR. GOLDSTEIN: When would you like our  
5 reply, Your Honor?

6 :34PM THE COURT: As soon as possible.

7 MR. SCHAR: Judge, just in terms of getting  
8 ready for trial, Ms. Hamilton correctly points out,  
9 we're obviously going to have to be doing transcript  
10 binders again. If we could have a date in the early  
11 part of next week so we might be able to come back  
12 to get a ruling about the redaction issues so we can  
13 put that in motion.

14 :35PM THE COURT: I was thinking Monday.

15 MR. SOROSKY: What time do you want us?

16 THE COURT: Talk to Mr. Walker. He has a  
17 better idea of my schedule.

18 MR. SOROSKY: Okay.

19 :35PM THE COURT: Okay, anybody else except Ms.  
20 Spears?

21 MR. SCHAR: Nothing else.

22 MR. SOROSKY: No.

23 THE COURT: Now.

24 :35PM MS. SPEARS: Thank you. Defense counsel's  
25 comment with regard to the Chicago Tribune motion

1 raises one more points for me, anyway. With regard  
2 to the sealed motions, most of it if not all of  
3 which were initiated by the defense, a couple of  
4 them, and it's really hard to follow them in  
:35PM  
5 listening to the rulings and I'm sure the press has  
6 probably the same questions, two of them at least  
7 were just noted to be a sealed motion, number 646  
8 and 6451, and it's hard to even know if that was one  
9 the motions the Court ruled on or not. So if it  
:36PM  
10 would be possible to know what specific motions  
11 those are.

12 THE COURT: Ask the lawyers and they'll tell  
13 you.

14 MS. SPEARS: For the record.

15 THE COURT: They'll tell you, you can sit  
16 with one lawyer from each side and they'll tell you  
17 which motion is which.

18 MS. SPEARS: Except it's not just me, Your  
19 Honor, it's the public --

:36PM  
20 THE COURT: Yes, but the thing is is somebody  
21 can post something on a board, I don't want to do it  
22 here, not now.

23 MS. SPEARS: That would be corrected along  
24 with the other filings?

25 THE COURT: Yeah.

1 MS. SPEARS: Because sitting here today, it's  
2 hard to even know what the Court was ruling on.

3 THE COURT: Well, you knew what the Court's  
4 ruling was, but if you want to have it attached to  
5 some particular motion ... I think basically  
6 because of the way I ruled, you'll understand what  
7 the motion was, and I believe that the grounds will  
8 be disclosed to you sooner rather than later in the  
9 actual motions.

:36PM 10 MS. SPEARS: Perhaps even in the minute  
11 order, if it's simply reflected what the motion was,  
12 if it was one of the ones 646 or 651, the one that  
13 was ruled on today, that would be helpful for  
14 everybody involved.

:37PM 15 THE COURT: Sure.

16 MS. SPEARS: Thank you.

17 THE COURT: You have received an important  
18 missive, Mr. Sorosky?

19 MR. SOROSKY: Pardon me?

:37PM 20 THE COURT: You have received an important  
21 missive?

22 MR. SOROSKY: No, we're trying to -- perhaps  
23 we can answer her question right now.

24 THE COURT: That would be fine, but maybe you  
25 can do it when I get off the bench.

1           MR. SCHAR: Judge, I think we can resolve  
2 this without --

3           MR. SOROSKY: I think the Court did rule on  
4 the numbered motions she referred to.

:37PM

5           THE COURT: Right.

6           MR. SOROSKY: Right.

7           THE COURT: There shouldn't be much left.

:37PM

8           MR. SOROSKY: Right. I think the numbers  
9 that Ms. Spears referred to were ruled on by the  
10 Court today.

11          THE COURT: Okay.

:37PM

12          MS. SPEARS: I hate to be a thorn here, but  
13 it is, for the public at large, if it could just be  
14 put in the minute order what's issued today what the  
15 name of the motion was --

16          THE COURT: I was actually trying to get this  
17 to you quicker than the minute order --

18          MS. SPEARS: Right.

:38PM

19          THE COURT: -- which is to have them tell you  
20 and then you can tell everybody else and then we'll  
21 put it in the minute order for the people who  
22 weren't here.

23          MS. SPEARS: All right.

24          THE COURT: Okay? Anything else?

:38PM

25          MR. GOLDSTEIN: Your Honor, just had one

1 question as far as scheduling. If you want us back  
2 on Monday, we can address it then, but just as far  
3 as when the jury is coming in to fill out the  
4 questionnaire and when we'll start questioning them.

:38PM 5 THE COURT: What's going to happen so far as  
6 I now understand it, the initial mailing that went  
7 out, the same mailing that went around last time  
8 which said your name is on a list for special panel  
9 for trial that will last X number of weeks, are you  
10 available. I am told that we are getting a fairly  
11 large number of yeses I will be available, and  
12 that's basically the only question they're asked,  
13 that and any other reason.

:39PM 14 What happens is they come in and they fill  
15 out the questionnaire. My guess, and it's only a  
16 guess, would be that the earliest we could begin  
17 jury selection, that is to say put people in the  
18 box, will be on April 21st. I will not sit on the  
19 22nd basically because, with one exception, I'm  
20 going to advise the jury that we don't sit on  
21 Fridays, and I'd like to be consistent with that.

:40PM 22 It's possible because of the mechanics of  
23 what we're dealing with here, we might not actually  
24 start with putting jurors in the box on the 21st,  
25 which means that we will start the Monday of the

1 next week, but that I've left flexible.

2 So that's basically where we are. And then  
3 the lawyers obviously are going to have to look at  
4 the questionnaires and we'll move along. We have a  
:40PM  
5 fairly good idea of how many jurors we need to get  
6 to a jury based on what happened last time, and also  
7 based on what happened in Family Secrets. But there  
8 could be a possibility that we get more than enough  
9 jurors who are willing to serve, but because of the  
:40PM  
10 luck of the draw we have too many of them are  
11 disqualified for other reasons and we don't know, so  
12 that's the unknown part.

13 So it's possible that there won't be opening  
14 statements until the middle of the week after we  
:41PM  
15 begin, it's possible they might come more quickly.  
16 And then that's the one thing that I think makes a  
17 re-trial a little easier, that everybody understands  
18 the mechanics and what kind of equipment they have  
19 to have.

20 The one last thing I have on my list here has  
21 to do with Ms. Spears and her request, which is I  
22 understand that you are going to make efforts to  
23 give to distribute promptly motions in papers that  
24 are no longer entirely sealed but for which there  
25 have been redactions, it's important that you give

1 me copies of those as soon as they're available and  
2 I would like to see them soon.

3 MR. SCHAR: Would you like to see them before  
4 they are publicly docketed?

:42PM

5 THE COURT: No, I'm satisfied. I just want  
6 to make sure it's done.

7 Anything else?

8 MR. GOLDSTEIN: Your Honor, one more thing.  
9 You had mentioned --

:42PM

10 THE COURT: You said one more thing before.

:42PM

11 MR. GOLDSTEIN: Well, it's a response to Your  
12 Honor's discussion as far as scheduling. It would  
13 be our preference, if Your Honor is willing to  
14 consider, that we start questioning jurors on that  
15 Monday, because I know that the questionnaires only  
16 stays in court that will give us the time on  
17 Wednesday evening Thursday and possibly Friday to  
18 review those questionnaires. So if your Honor takes  
19 into consideration, if we could possibly start  
20 questioning jurors on Monday.

:43PM

21 THE COURT: I might but I probably wouldn't,  
22 the reason I probably wouldn't is, you're not going  
23 to be asked to exercise your peremptory challenges  
24 right away, you know, that comes at the end of the  
25 process by which time you will have had plenty of

:43PM

1 time to look at the questionnaires to make those  
2 kinds of judgments. And with respect to challenges  
3 for cause, those, too, come later, and I do that  
4 deliberately so that you will have a chance to think  
5 about what's in the questionnaire. Given the nature  
6 of the questionnaires and how they're answered, it  
7 may turn out that I'm wrong and you're right, in  
8 which case we'll do it differently.

9               Okay?

10              MR. SOROSKY: One other thing, so --

11              THE COURT: Do you, like, agree that each one  
12 of you will take one other --

13              MR. SOROSKY: Actually two things. One, so  
14 the defendant may not have to be here on the 20th?

15              THE COURT: The defendant should be here.

16              MR. SOROSKY: Should be here on 20th?

17              THE COURT: Just in case.

18              MR. SOROSKY: Okay. Secondly, is it possible  
19 to get the titles of all the redacted motions in the  
20 order? Apparently that will help the media.

21              THE COURT: Why don't you just make a list  
22 and we'll take care of the minute order part of it.

23              MR. SOROSKY: Okay. Thank you.

24              MS. SPEARS: Thank you, Your Honor.

25              MR. SCHAR: I think there may be one related

1 medical records that we may want redactions to part  
2 of the title, but otherwise this won't be an issue.

3 THE COURT: That's fine.

4 Thank you.

5

6 (which concluded the proceedings had on this  
7 date in the above entitled cause.)

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5 I CERTIFY THAT THE FOREGOING IS A CORRECT TRANSCRIPT  
6 FROM THE RECORD OF PROCEEDINGS IN THE ABOVE-ENTITLED  
7 MATTER

8

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10 /s/Blanca I. Lara

date

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16 Blanca I. Lara

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17 Date

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